

**Statement of Christopher Julius, NTSB
Aviation Image Recording Public Hearing
Legal and Privacy Issues Panel
July 28, 2004**

Good morning Madam Chairman, Members of the Board of Inquiry, ladies and gentlemen. My statement this morning is intended to provide an overview of cockpit voice recorder (CVR) and cockpit imaging recorder (CIR) legislation, and a brief description of NTSB policies and procedures regarding these recordings. The witnesses who follow me will cover in more detail the history of the legislation and its application in judicial settings. Other witnesses on this panel will address FAA enforcement issues, and international practices regarding CVRs and CIRs. An expanded written version of my statement will be part of the public docket.

HISTORY OF THE CVR AND KEY LEGISLATIVE MODIFICATIONS

CVRs were first required in 1964, as a result of FAA rulemaking. At the time, the FAA explained:

[CVRs] would be a valuable tool in the investigation of accidents by providing firsthand information of the flight crews' observation and analysis of conditions aboard the airplane and the procedures employed by them to cope with an emergency.

During the rulemaking process, the FAA was urged by some to implement a requirement that CVR material not be utilized for any purpose other than accident investigation. In its rulemaking, the FAA stated that it could not bind the courts, and "could not, even if it found it desirable, specify by rule those persons who would be authorized to read out voice recorder tapes." The FAA, however, did announce that CVR material would not be used by FAA in enforcement proceedings.

It should be noted that, aside from the obvious investigative value, the impetus for the CVR mandate was, simply, the availability of appropriate technology.

Since the initial FAA rulemaking in 1964, three major pieces of legislation regarding CVRs and CIRs have been enacted.

In 1982, Congress passed legislation expressly codifying NTSB's long-standing policy of releasing only transcripts of the pertinent portions of the CVR recording, and not releasing the actual audio recording.

In 1990, Congress passed legislation to address, in part, the increasingly sensationalistic media attention to aircraft accidents, and other perceived misuses of CVR material. The impetus for the new legislation was, in large part, a Texas state court order that required Delta Airlines to release an accident CVR recording in Delta's possession -- NTSB had completed its investigation -- to a

local television station. Even worse, the Delta CVR recording was broadcast on local and national television. The 1990 legislation requires that discovery of CVR material in judicial proceedings only be permitted if a judge determines it necessary for a party to receive a fair trial. If discovery is permitted, strict procedures govern the scope of access to CVR material, and a protective order to prevent dissemination of non-public CVR material outside of the judicial proceeding is required.

Finally, in 2000, Congress expanded the previous legislation to encompass CIRs. This legislative change was sought by NTSB to ensure that there were no “legislatively-defined differences between the treatment of new video technology and existing voice recorders, as the lack of statutory protection for video technology would serve to limit its acceptance.”

The current statutory language and the legislative history of these provisions are set forth in Exhibits 10-A and 10-B.

So, as we sit here today, under the current statutory scheme NTSB is bound by a general proscription:

the Board may not disclose publicly any part of a cockpit voice or video recorder recording or transcript of oral communications by and between flight crew members and ground stations related to an accident or incident investigated by the Board.

The only exceptions to this general proscription are (1) the NTSB’s obligation to “make public any part of a transcript or any written depiction of visual information the Board decides is relevant to the accident or incident” and (2) the NTSB’s prerogative to make reference at any time to recorded information in making safety recommendations.

Also, although it is outside the ambit of any statutory provision, it bears mentioning that, in our experience, CVR recordings have not been used in the United States for administrative enforcement or criminal proceedings against flight crews.

NTSB POLICIES AND PROCEDURES

NTSB has never authorized the release of a CVR recording, nor has NTSB ever authorized anyone else to release a CVR recording. Obviously, the content is very sensitive, and NTSB treats the evidence recorded by CVRs and CIRs with the utmost respect.

In fact, NTSB currently has procedures and policies in place to ensure that the actual CVR recordings are never heard or seen, except by a very small number of qualified participants in the official accident or incident investigation.

For example, even among NTSB investigators and officials actively involved in the investigation, access to the recording or draft transcripts is strictly controlled. Indeed, only four

persons at NTSB are automatically authorized to hear a CVR recording, or review draft transcripts:

- the recorder specialist assigned to the accident;
- the investigator-in-charge (IIC);
- the Director of the Office of Aviation Safety; and
- the Director of the Office of Research and Engineering

All other NTSB personnel need to consult with the IIC and obtain the permission of both the Director of the Office of Aviation Safety and the Director of the Office of Research and Engineering prior to reviewing a recording or non-public transcript.

Anyone who listens to a CVR recording must sign a master log sheet every time they listen to a CVR.

Similarly, for participants in a CVR group convened by NTSB to transcribe a CVR recording, each participant must be approved by the Director of the Office of Aviation Safety and the Director of the Office of Research and Engineering before they are permitted to hear a CVR recording. Party representatives participating on the CVR group must also sign the *CVR Non-Disclosure Agreement*, and they are prohibited from discussing the recording while outside the laboratory. Finally, participants are prohibited from bringing electronic devices into the CVR laboratory, and any notes taken during the meeting are collected and destroyed before the group is dismissed.

The CVR Handbook for NTSB staff is reproduced in Exhibit 10-F.

NTSB would follow similar procedures for CIRs.

ICAO ANNEX 13

Finally, Annex 13 to the Convention on International Civil Aviation contains international standards governing aircraft accident and incident investigations. Many countries of the world, including the United States, are signatories. The relevant portions of Annex 13, including differences from requirements in the United States, are set forth in Exhibit 10-I.

Madam Chairman, that concludes my statement.